

REMARKS

The Applicant appreciates the Examiner's thorough review of the Application.

Reconsideration and allowance of all claims are requested.

No new matter has been added by the amendments. Although Applicant disagrees with the rejections of record, purely in the interest of expediting prosecution, Claims 8 and 12 have been canceled without prejudice and without disclaimer and their subject matter has been added to independent Claims 1 and 9, respectively. The drawing has been amended to overcome the Examiner's objection and the Specification has been amended accordingly.

New Claims 14 - 22 add subject matter found in the Specification, particularly at Page 8, line 24 to Page 9, line 1. None of this subject matter is found in the references. The special structural features preferably used in the compressive areas of the clothing article help to obtain the very high compressive force necessary for a user with a hernia.

Claims 1 - 7, 9 - 11, and 13 - 22 are now pending in the application.

Claims 1 - 4 and 6 - 13 are patentable under 35 U.S.C. 102(b) over Browder, Jr. (U.S. 6,276,175).

Browder discloses a product, e.g. an undergarment which contains at least one area of control, which has a stitch pattern which increases the modulus of the tubular knit fabric. Browder describes a product of common type which is used to provide to control/support of different body parts, e.g. hips, waists and under a women's breast.

Nowhere in Browder is it stated that the product could be used for persons with a hernia or an ostomy hernia. The Browder technology is based on the specific stitch pattern being a tightening and alternating tuck stitch pattern which forms the area of control. However, such

knitting technology in itself is not new. The patentee has knowledge that Santoni during the ITMA exhibition in Milan in 1995 disclosed products with such knitting technology which could give a limited support. In fact, Browder himself also lists quite a lot of prior art that also disclose such support products supplied by similar means.

Applicant agrees that Browder discloses a seamless tubular product as stated by the Examiner. Applicant also agrees that Browder discloses that such product could be used as an undergarment, e.g. a brief in which there is control areas 25 established by tightening the fabric by using the alternating tuck stitch pattern (column 3, lines 35-39).

Browder discloses column 2, lines 27-30 that the tension of the elastomeric yarn is constant throughout the entire garment. Therefore the increased control is established merely by the stitch pattern. Moreover, Browder discloses that the areas of increased control have an increase in the modulus of the fabric between 6 % and 10 %. Such increase should provide a desirable compromise between control and comfort.

From this it occurs that Browder technology should provide a garment to appear as an aesthetic non-bulging garment, cf. column 2, lines 2-5. This is an indication that Browder has never given any teaching for a product which should give any effect for a person having an ostomy hernia. Even though the Examiner in line 2 and 3 of the paragraph 3 states that Browder discloses a clothing article capable of being worn by a person having an ostomy hernia; then Browder does not give any explanation that a person should have any benefit from such product in having sufficient high compression of the size indicated, namely 15 to 50 mmHg within a selected area, as indicated in the present application. Thus, for a person having an ostomy hernia, wearing Browder's product may not make any difference at all, compared to normal underwear

except from the non-bulging appearance which is of no importance for ensuring the correct compression.

The mere fact that Browder discloses the use of elastic yarns is not a proof that Browder discloses all structural limitations defined in the claim. The Examiner is of the opinion that the specific compression between 15 to 50 mmHg is a functional recitation. However, this recitation is clearly a structural feature seeing that it is possible to effect a measurement to establish whether such size of the compression is established in a product when the right size product is worn by a user with a hernia.

Moreover, the Examiner alleges that Browder disclose a material which disclose a force/elongation curve including a largely flat curve pattern. Applicant disagrees in this point of view, seeing that there is no disclosure in Browder which gives support for this allegation.

In the present invention it is defined that a constant compression should be established within a certain range of user sizes and shapes. As indicated in paragraph 0016 and 0017 of the present application the present invention makes it possible to form an article which in a non-extended or "slack" condition has a greater size which makes it casier for a user to put on the clothing article even if there is high compression (15 – 50 mmHg) which is necessary for support a hernia.

If such high compression is established in a product taught by Browder it would have a size and elasticity which makes it difficult or even impossible for the user to put on, especially when it is remembered that a number of persons who should use the hernia product would be elderly people.

Examiner states page 4, lines 6 – 10 that Browder column 2, lines 25 – 29 discloses a garment in which the elastic yarns constitute approximately 50%. This is an incorrect

understanding of the Browder technology. There is no disclosure nor any hint that the elastic yarn should constitute such high percentage of the product.

Browder discloses column 3, lines 26 – 33 something which relates to the content of the elastic yarns. However, there is no possible way to conclude that the percentage of elastic yarns in the product is approximately 50% as stated by the Examiner. In fact, the thousands of different commodity products on the market comprising Browder's technology generally have an elastic content of 3-12%.

Moreover, it should be noted that Browder's "compression area" only differs from the remaining areas in a different knitting structure. Therefore Browder does not argue that a high amount of elastic yarns are provided in control areas.

This is quite different to our disclosure in claim 1 and paragraph 0031 and paragraph 0038 where it is disclosed that the technical effect is obtained with high percentage of elastic yarns in the areas which are to exert compression. Moreover, paragraph 38 is especially related to the elasthane yarn thickness from 100 - 350 dtex, preferably from 150 - 250 dtex. Contrary to this Browder discloses 70 denier and this could be calculated to $70/0.9 = 78$ dtex.

In this respect it should also be noted that you could not directly compare the elastic yarn weight percentage and the thickness of the elastic yarn used in a specific area, seeing that the percentage of such elastic yarn contained in an area besides the thickness also will depend on the knitting structure, the yarn tension, the mixture of yarns and how each yarn is knitting in the area.

Browder's method disclosing "additional control" (column 1, line 8) and the specific knitting pattern being a tightening and alternating tuck stitch pattern alone would not make it possible to obtain a compression which is close to the defined area of 15 – 50 mmHg against the

body. This compression interval is especially important, seeing that such size of the compression is necessary in order for the product to exert a compression against the skin in order that a hernia is properly supported.

Seeing that Browder does not give any disclosure of the level for the compression we find it justified to state that Browder does not disclose the level of compression which is stated in the present claims.

For an invention to be anticipated, it must be demonstrated that each and every element of the claimed invention is present in the "four corners" of a single prior art, either expressly described therein or under the principle of inherency. Lewmar Marine Inc. v Barient Inc., 3 USPQ2d 1766, 1767-1768 (Fed. Cir. 1987) (emphasis added). The absence from a prior art reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible, Inc., 230 USPQ 81, 84 (Fed. Cir. 1986).

Independent Claims 1 and 9 are patentable over Browder at least because Browder does not teach compression of between 15 to 50 mmHg within a previously selected area of the clothing article, an approximately constant compression within a certain range of users' sizes and shapes, or elastic yarns used in a part between 15 and 60%, preferably between 30 and 50%, of the areas of the clothing article, which are to exert compression on the user's body.

The Browder product is not capable of supplying a compression of between 15 to 50 mmHg or a constant compression within a range of user's sizes. Furthermore, Browder does not teach or suggest anywhere the use of 15 to 60% elastic yarns. Column 2, lines 25-29, which are cited to by the Examiner in this regard, say nothing about the percentage of elastic yarns. Indeed, it is not possible to determine the percentage of elastic yarns based on the information

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provided in Browder. The use of a high elastic yarn percentage in the areas of the clothing article that exert compression on the user's body is essential and novel.

Claims 2 - 7, 10 - 11, and 13 depend from independent Claim 1 or 9 and add further patentable limitations. For at least the above reasons, the rejection of Claims 1 - 4 and 6 - 13 under 35 U.S.C. 102(b) over Browder is improper and should be withdrawn.

Claim 5 is patentable under 35 U.S.C. 103(a) over Browder, Jr. (U.S. 6,276,175) in view of Sinigagliesi (U.S. 2,736,036).

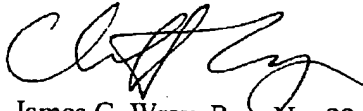
Claim 5 depends from independent and patentable Claim 1 and shares its patentable features and adds further patentable limitations. For at least this reason, the rejection of Claim 5 under 35 U.S.C. 103(a) over Browder in view of Sinigagliesi is improper and should be withdrawn.

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CONCLUSION

Reconsideration and allowance of all claims are respectfully requested.

Respectfully,



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